

Missouri
Department
of Transportation



Pete K. Rahn, Director

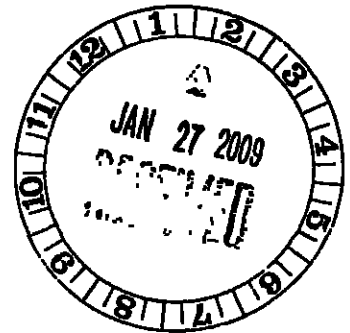
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January 16, 2009

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**SURFACE
TRANSPORTATION BOARD**



Ms Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423

RE Comments by Missouri DOT in Response to STB Ex Parte No. 683

Dear Ms Quinlan

The state of Missouri through the Missouri Department of Transportation submits the following comments in relation to the Board's new responsibilities in the recently passed Passenger Rail Investment and Improvement Act of 2008 [Pub. L. 110-432]

The Missouri Department of Transportation supports the new provisions relating to passenger trains and their relationship with the host railroad's operating procedures in terms of dispatching and priority. The sections that pique our interest the most are the following.

Section 213 amends 49 U.S.C. 24308 to give the Board power to investigate, in certain circumstances, failures by Amtrak to meet on-time performance standards or service quality standards established pursuant to Section 207. The Board "may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation, to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators." 49 U.S.C. 24308(f)(1)

If, after investigation, the Board determines that delays or failures to achieve minimum standards are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation, the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable. 49 U.S.C. 24308(f)(2). In awarding damages and prescribing other relief, the Board shall consider such factors as: (1) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards, and (2) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved. The Act instructs the Board, as it deems appropriate, to order the host rail carrier to remit the damages awarded to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier's failure to provide preference to Amtrak over freight transportation. 49 U.S.C. 24308(f)(3).

Missouri supported the legislation when it made its way through Congress, and since Missouri is one of only 14 states which currently has state-supported passenger rail provided by Amtrak, our interest in the legislation's implementation is to provide a fair and reasonable method of use of track time in an effort to get passenger trains on a reasonable on-time performance schedule while at the same time accommodating and understanding the freight railroad's capacity issues and how this may affect that same on-time performance

We have the following questions and observations in reference to the recently passed legislation, specifically in reference to section 209, passenger train performance

- 1 In regard to the provisions in Sec. A (1), we assume that the language which refers to "two consecutive" calendar quarters of averaging less than 80% on-time performance", means that the two quarters must occur after the date the legislation was passed, correct? We are assuming that the STB could not currently open an investigation to investigate past quarters that were in progress or already elapsed when the legislation was passed
- 2 In the same paragraph, it states the STB may "make recommendations" and "identify reasonable measures" to improve on-time performance We are assuming since it is not specifically excluded, this would include recommendations and measures that would address the methods and procedures by which freight railroads dispatch both freight trains and Amtrak trains
- 3 In Section 3(a), it states the STB may consider the extent to which "Amtrak" suffers financial loss in awarding damages against the freight railroad We assume that this wording is including by design Amtrak trains that are paid for by a state, in which in reality the state paying for the service is suffering financial loss because of its investment in the Amtrak train
- 4 In Section 3(b), it states that the STB may consider and order such measures that may reasonably be expected to delay Amtrak in the future We are assuming that because of this paragraph, that if a host freight railroad comes before the STB multiple times under this section for failing to give priority to Amtrak on the same line, that, that fact can be taken into consideration as a measure of the proposed damages against the railroad by the STB
- 5 Lastly, in Section 4, it states that the damages awarded against the freight railroad shall be used for capital and operating expenditures on the line, inferring that is the line owned by the freight railroad There is no mention of how this will be enforced or how the parties will agree which capital improvements could be made We are assuming that the STB also has the authority to enforce this provision should the freight railroad refuse to cooperate in completing an agreed-on capital expenditure using funds under this section.

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Thank you for the opportunity to comment through written testimony. We appreciate your consideration and the improvement of passenger rail services because of the many provisions in this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney P. Massman", with a long horizontal flourish extending to the right.

Rodney P. Massman
Administrator of Railroads,
Missouri Department of Transportation

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Copy Brian Weiler-mo
Jay Wunderlich-ga